

By: Thompson of Harris

H.B. No. 2918

A BILL TO BE ENTITLED

AN ACT

relating to durable powers of attorney.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 752.051 of the Texas Estates Code is amended to read as follows:

SUBCHAPTER B. FORM OF STATUTORY DURABLE POWER OF ATTORNEY

Text of section effective on January 01, 2014

Sec. 752.051. FORM. The following form is known as a "statutory durable power of attorney":

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

DESIGNATION OF AGENT

I _____

name the following

(Name of Principal) person as my agent:

Name of Agent:

Agent's Address:

1 _____

2 Agent's Telephone Number:

3 _____

4 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

5 If my agent is unable or unwilling to act for me, I name as my
6 successor agent:

7 Name of Successor Agent:

8 _____

9 Successor Agent's Address:

10 _____

11 Successor Agent's Telephone Number:

12 _____

13 If my successor agent is unable or unwilling to act for me, I name as
14 my second successor agent:

15 Name of Second Successor Agent:

16 _____

17 Second Successor Agent's Address:

18 _____

19 Second Successor Agent's Telephone Number:

20 _____

21 GRANT OF GENERAL AUTHORITY

22 I grant my agent and any successor agent general authority to act
23 for me with respect to the following subjects as defined in Subtitle
24 P, Title 2, Estates Code:

25 (INITIAL each subject you want to include in the agent's general
26 authority. If you wish to grant general authority over all of the
27 subjects you may initial "ALL OF THE POWERS LISTED IN (A)-(M)"

1 instead of initialing each subject.)

2 (A) real property transactions;

3 (B) tangible personal property transactions;

4 (C) stock and bond transactions;

5 (D) commodity and option transactions;

6 (E) banking and other financial institution
7 transactions;

8 (F) business operating transactions;

9 (G) insurance and annuity transactions;

10 (H) estate, trust, and other beneficiary
11 transactions;

12 (I) claims and litigation;

13 (J) personal and family maintenance;

14 (K) benefits from social security, Medicare,
15 Medicaid, or other governmental programs or civil or military
16 service;

17 (L) retirement plan transactions;

18 (M) tax matters;

19 (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M).

20 YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

21 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

22 My agent MAY NOT do any of the following specific acts for me UNLESS
23 I have INITIALED the specific authority listed below:

24 (CAUTION: Granting any of the following will give your agent the
25 authority to take actions that could significantly reduce your
26 property or change how your property is distributed at your death.

27 INITIAL ONLY the specific authority you WANT to give your agent.)

1 (A) Create, amend, revoke, or terminate an inter
2 vivos trust

3 (B) Make a gift, (1) outright or for the benefit
4 of, a person, of the principal's property, including by the
5 exercise of a presently exercisable general power of appointment
6 held by the principal, in an amount per donee not to exceed the
7 annual dollar limits of the federal gift tax exclusion under
8 Internal Revenue Code Section 2503(b), 26 U.S.C. Section 2503(b),
9 [as amended,] without regard to whether the federal gift tax
10 exclusion applies to the gift, or if the principal's spouse agrees
11 to consent to a split gift pursuant to Internal Revenue Code Section
12 2513, 26 U.S.C. 2513, [as amended,] in an amount per donee not to
13 exceed twice the annual federal gift tax exclusion limit; and (2)
14 consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C.
15 Section 2513, [as amended,] to the splitting of a gift made by the
16 principal's spouse in an amount per donee not to exceed the
17 aggregate annual gift tax exclusions for both spouses.
18 Additionally, this power of attorney may contain other special
19 special instructions.

20 (C) Create or change rights of survivorship

21 (D) Create or change a beneficiary designation

22 (E) Authorize another person to exercise the
23 authority granted under this power of attorney

24 (F) Waive the principal's right to be a
25 beneficiary of a joint and survivor annuity, including a survivor
26 benefit under a retirement plan

27 (G) Exercise fiduciary powers that the principal

1 has authority to delegate

2 [(H) Disclaim or refuse an interest in property,
3 including a power of appointment]

4 LIMITATION ON AGENT'S AUTHORITY

5 An agent that is not my ancestor, spouse, or descendant MAY NOT use
6 my property to benefit the agent or a person to whom the agent owes
7 an obligation of support unless I have included that authority in
8 the Special Instructions.

9 SPECIAL INSTRUCTIONS (OPTIONAL)

10 You may give special instructions on the following lines:

11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____

19 EFFECTIVE DATE

20 This power of attorney is effective immediately unless I have
21 stated otherwise in the Special Instructions.

22 NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

23 If it becomes necessary for a court to appoint a [conservator or
24 guardian] of my estate or [guardian] of my person, I nominate the
25 following person(s) for appointment:

26 Name of Nominee for [conservator or guardian] of my estate:

27 _____

1 Nominee's Address:

2 _____

3 Nominee's Telephone Number:

4 _____

5 Name of Nominee for [guardian] of my person:

6 _____

7 Nominee's Address:

8 _____

9 Nominee's Telephone Number:

10 _____

11 RELIANCE ON THIS POWER OF ATTORNEY

12 Any person, including my agent, may rely upon the validity of this
13 power of attorney or a copy of it unless that person knows it has
14 terminated or is invalid.

15 SIGNATURE AND ACKNOWLEDGMENT

16 _____

17 Your Signature Date

18 _____

19 Your Name Printed

20 _____

21 Your Address

22 _____

23 Your Telephone Number

24 State of

25 [County] of

26 This document was acknowledged before me on

27 _____,

1 (Date) by _____.

2 (Name of Principal)

3 _____ (Seal)

4 Signature of Notary

5 My commission expires: _____

6 [This document prepared by:

7 _____

8 _____]

9 IMPORTANT INFORMATION FOR AGENT

10 Agent's Duties

11 When you accept the authority granted under this power of attorney,
12 a special legal relationship is created between you and the
13 principal. This relationship imposes upon you legal duties that
14 continue until you resign or the power of attorney is terminated or
15 revoked. You must:

16 (1) do what you know the principal reasonably expects
17 you to do with the principal's property or, if you do not know the
18 principal's expectations, act in the principal's best interest;

19 (2) act in good faith;

20 (3) do nothing beyond the authority granted in this
21 power of attorney; and

22 (4) disclose your identity as an agent whenever you
23 act for the principal by writing or printing the name of the
24 principal and signing your own name as "agent" in the following
25 manner:

26 (Principal's Name) by (Your Signature) as Agent

27 Unless the Special Instructions in this power of attorney state

1 otherwise, you must also:

2 (1) act loyally for the principal's benefit;

3 (2) avoid conflicts that would impair your ability to
4 act in the principal's best interest;

5 (3) act with care, competence, and diligence;

6 (4) keep a record of all receipts, disbursements, and
7 transactions made on behalf of the principal;

8 (5) cooperate with any person that has authority to
9 make health-care decisions for the principal to do what you know the
10 principal reasonably expects or, if you do not know the principal's
11 expectations, to act in the principal's best interest; and

12 (6) attempt to preserve the principal's estate plan if
13 you know the plan and preserving the plan is consistent with the
14 principal's best interest.

15 TERMINATION OF AGENT'S AUTHORITY

16 You must stop acting on behalf of the principal if you learn of any
17 event that terminates this power of attorney or your authority
18 under this power of attorney. Events that terminate a power of
19 attorney or your authority to act under a power of attorney include:

20 (1) death of the principal;

21 (2) the principal's revocation of the power of
22 attorney or your authority;

23 (3) the occurrence of a termination event stated in
24 the power of attorney;

25 (4) the purpose of the power of attorney is fully
26 accomplished; or

27 (5) if you are married to the principal, a legal action

1 is filed with a court to end your marriage, or for your legal
2 separation, unless the Special Instructions in this power of
3 attorney state that such an action will not terminate your
4 authority.

5 Liability of Agent

6 The meaning of the authority granted to you is defined in the
7 Uniform Power of Attorney Act [insert citation]. If you violate the
8 Uniform Power of Attorney Act [insert citation] or act outside the
9 authority granted, you may be liable for any damages caused by your
10 violation.

11 [I, _____ (insert your name and address), appoint
12 _____ (insert the name and address of the person appointed) as
13 my agent (attorney in fact) to act for me in any lawful way with
14 respect to all of the following powers except for a power that I
15 have crossed out below.

16 [~~TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.~~

- 17 [~~Real property transactions,~~
- 18 [~~Tangible personal property transactions,~~
- 19 [~~Stock and bond transactions,~~
- 20 [~~Commodity and option transactions,~~
- 21 [~~Banking and other financial institution transactions,~~
- 22 [~~Business operating transactions,~~
- 23 [~~Insurance and annuity transactions,~~
- 24 [~~Estate, trust, and other beneficiary transactions,~~
- 25 [~~Claims and litigation,~~
- 26 [~~Personal and family maintenance,~~
- 27 [~~Benefits from social security, Medicare, Medicaid, or other~~

1 ~~governmental programs or civil or military service,~~

2 ~~[Retirement plan transactions,~~

3 ~~[Tax matters.~~

4 ~~[IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL~~
5 ~~BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY~~
6 ~~AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO~~
7 ~~PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I~~
8 ~~WERE PERSONALLY PRESENT.~~

9 ~~[SPECIAL INSTRUCTIONS:~~

10 ~~[Special instructions applicable to gifts (initial in front~~
11 ~~of the following sentence to have it apply):~~

12 ~~[I grant my agent (attorney in fact) the power to apply my~~
13 ~~property to make gifts, except that the amount of a gift to an~~
14 ~~individual may not exceed the amount of annual exclusions allowed~~
15 ~~from the federal gift tax for the calendar year of the gift.~~

16 ~~[ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS~~
17 ~~LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.~~

18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____

27 ~~[UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS~~

1 ~~EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.~~

2 ~~[CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE~~
3 ~~ALTERNATIVE NOT CHOSEN.~~

4 ~~[(A) This power of attorney is not affected by my subsequent~~
5 ~~disability or incapacity.~~

6 ~~[(B) This power of attorney becomes effective upon my~~
7 ~~disability or incapacity.~~

8 ~~[YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY~~
9 ~~IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.~~

10 ~~[IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED~~
11 ~~THAT YOU CHOSE ALTERNATIVE (A).~~

12 ~~[If Alternative (B) is chosen and a definition of my~~
13 ~~disability or incapacity is not contained in this power of~~
14 ~~attorney, I shall be considered disabled or incapacitated for~~
15 ~~purposes of this power of attorney if a physician certifies in~~
16 ~~writing at a date later than the date this power of attorney is~~
17 ~~executed that, based on the physician's medical examination of me,~~
18 ~~I am mentally incapable of managing my financial affairs. I~~
19 ~~authorize the physician who examines me for this purpose to~~
20 ~~disclose my physical or mental condition to another person for~~
21 ~~purposes of this power of attorney. A third party who accepts this~~
22 ~~power of attorney is fully protected from any action taken under~~
23 ~~this power of attorney that is based on the determination made by a~~
24 ~~physician of my disability or incapacity.~~

25 ~~[I agree that any third party who receives a copy of this~~
26 ~~document may act under it. Revocation of the durable power of~~
27 ~~attorney is not effective as to a third party until the third party~~

1 date of this Act. An action brought before the effective date of
2 this Act is governed by the law in effect immediately before that
3 date, and the former law is continued in effect for that purpose.

4 SECTION 3. This Act takes effect January 1, 2014.